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975. In the last case cited it was held that the bail was forfeited despite Soldiers' and Sailors' Civil Relief Act (U. S. Comp. St. 1918, §§ 3078¼-3078¼ss), where the accused was stationed only a short distance from the place of trial and might easily have obtained a furlough to attend.

The unexpected scarcity of decisions on this point during the period of the recent war is due to the Soldiers' and Sailors' Civil Relief Act, *supra*, which provides for the staying, during the war, of all actions and proceedings against persons in the service of the United States—this exoneration extending to sureties and guarantors as well as principals.

CONTRACTS—DURESS OF GOODS—UNREASONABLE RENT IN A CROWDED COMMUNITY.—Plaintiff leased to defendant a portion of a floor in an apartment house in New York City. Six months before the expiration of this lease, plaintiff's agent notified defendant that plaintiff required possession of the apartment at the end of the lease, but later tendered defendant a new lease to commence on the expiration of the old lease, but at an increased rental of 92.3%, which increase was based on an unreasonable rate of return to plaintiff on the money invested. Defendant offered to pay an increase of 50%, but that was refused. After several days' consideration, during which defendant discovered the housing conditions to be such that he could not find a new place to live, and on a threat by plaintiff's agent to lease the place to another, defendant signed the new lease. During the entire transaction defendant was in ill health which caused great mental and physical depression. Plaintiff brought this action for arrears of rent due under the new lease, and defendant set up the defense of duress. *Held*, judgment for the defendant. *Sylvan Mortgage Co. v. Stadler*, 185 N. Y. Supp. 293.

The same court in *Seventy-eighth St. & Broadway Co. v. Rosenbaum*, 182 N. Y. Supp. 505, said that landlords and tenants could not contract on an equal basis, that the tenant was compelled by the sheer necessity of having a place to dwell in to agree to any conditions that might be imposed by the landlord and that the freedom of contract was impaired.

To constitute duress, it is sufficient if the will be constrained by the unlawful presentation of choice between comparative evils, as inconvenience and loss by the detention of property, loss of property altogether, or compliance with an unconscionable demand. *Harris v. Carey*, 112 Va. 362, 71 S. E. 551, 26 Ann. Cas. 1350. Duress is simply the deprivation of the will power of one person by another putting him in fear for the purpose of obtaining by that means some valuable advantage from him. The means by which that condition of mind is produced are matters of fact, and whether such condition was actually produced is wholly a matter of fact. *Galusha v. Sherman*, 105 Wis. 263, 81 N. W. 495, 47 L. R. A. 417.

Although it has been usually held that a threat to do a lawful act cannot constitute duress, the more modern view seems to be that a lawful act may be so perverted and put to improper use to compel the assent of a man to a contract as to constitute duress. *Hartford Ins. Co. v. Kirkpatrick*, 111 Ala. 456, 20 So. 651; *Morse v. Woodworth*, 155 Mass. 235, 29 N. E. 525; *Chicago, etc., R. Co. v. Chicago, etc., Co.*, 79 Ill.

121; *Fountain v. Bigham*, 235 Pa. 35, 84 Atl. 131, 29 Ann. Cas. 1185. Moral duress consists in imposition, oppression, undue influence, or the taking of undue advantage of the business or financial stress, or extreme necessities, or weaknesses of another; the theory under which relief is granted is that the party profiting thereby has received money which in equity and good conscience he ought not to retain. And so money paid by one in financial distress to compromise a suit against him by a party owing him large sums, which suit would take several years, is recoverable as paid under duress. *Rees v. Schmits*, 164 Ill. App. 250; *Faulkner v. Faulkner*, 147 N. Y. Supp. 745. Again one paying money or agreeing to pay it to release goods detained from him might have such an immediate want of his goods that an action at law would not be adequate. *Harmony v. Bingham*, 12 N. Y. 99; *Vine v. Glenn*, 41 Mich. 112, 1 N. W. 997; *Van Dyke v. Wood*, 70 N. Y. Supp. 324.

This latter proposition is not properly duress resulting from a threat to do a lawful act, but it is mentioned as showing the English view. The ruling was applied in *Astley v. Reynolds*, 2 Strange 915, and seems to be the most liberal stand taken by the English courts in cases involving duress of goods. This case has been much cited in later cases, sometimes with approval, and at other times with bitter criticism.

CONTRACTS—SPECIFIC PERFORMANCE—TIME NOT OF ESSENCE OF A CONTRACT TO PAY MONEY.—The plaintiff and the defendant entered into an agreement concerning the purchase of a certain tract of land. By the terms of the contract the plaintiff paid a portion of the stipulated price and agreed to pay the balance on a certain named date at which time the defendant was to convey title. It was stipulated that upon failure of the plaintiff to perform promptly he was to lose all rights in the property and the amount already paid. The plaintiff did not perform by the specified date but offered to perform shortly thereafter, at which time he requested the defendant to make title. Upon refusal by the defendant, the plaintiff brought a bill in equity to enforce specific performance. *Held*, Decree for plaintiff. *Morgan v. Forbes* (Mass.), 128 N. E. 792.

At law, time is always of the essence of the contract. *Tyler v. Young*, 2 Scam. (Ill.) 444, 35 Am. Dec. 116; *Shinn v. Roberts*, 1 Spen. (N. J.) 435, 43 Am. Dec. 636. But equity abhors a forfeiture. *Palmer v. Ford*, 70 Ill. 369; *Cheney v. Bilby*, 74 Fed. 52. And does not therefore ordinarily regard time as being of the essence. *Young v. Rathbone*, 16 N. J. Eq. 224, 84 Am. Dec. 151; *Brastner v. Gratz*, 6 Wheat. 528. Specific performance may be decreed in case justice requires it, even though the literal terms of or stipulations as to time have not been observed. *Sanford v. Weeks*, 38 Kan. 319, 16 Pac. 465, 5 Am. St. Rep. 748; *Jones v. Robbins*, 29 Me. 351, 50 Am. Dec. 593.

Yet the courts uniformly agree that the parties may expressly stipulate that time is of the essence of the contract to perform a collateral act other than the payment of money, and equity will not relieve the party in default. *Monroe v. Armstrong*, 96 Pa. St. 307; *Haggerty v. Elytas Land Co.*, 89 Ala. 428, 7 So. 651. And the same rule has been applied